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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/636,731	08/10/2000	Jerry Thomas Moore	9283/001	9120
24283	7590	05/21/2004	EXAMINER	
PATTON BOGGS 1660 LINCOLN ST SUITE 2050 DENVER, CO 80264			ROWAN, KURT C	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 05/21/2004

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 5172004

Application Number: 09/636,731
Filing Date: August 10, 2000
Appellant(s): MOORE, JERRY THOMAS

Carl Forest
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed Feb 17, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The amendment after final rejection filed on Dec 10, 2003 has been entered.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1, 2, 40 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claims 4-5 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claims 3, 6, 24 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claim 23 stand alone and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claims 25 and 41 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claims 7-18 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix A1 to the brief is correct.

(9) *Prior Art of Record*

1,549,400	WILMER	8/1925
4,831,772	GILLESPIE	5/1989
5,505,354	HUTTON ET AL.	4/1996
5,950,352	VOLMER	9/1999

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-2, 4, 40 are rejected under 35 U.S.C. 103 as being obvious over Wilmer in view of Gillespie. This rejection is set forth in prior Office Action, Paper No. 9/10/2003.

Claims 3, 5-6, 23-25, 41 are rejected under 35 U.S.C. 103 as being obvious over Wilmer in view of Gillespie and Hutton. This rejection is set forth in prior Office Action, Paper No. 9/10/2003.

Claims 1-2 are rejected under 35 U.S.C. 103 as being obvious over Volmer. This rejection is set forth in prior Office Action, Paper No. 9/10/2003.

(11) Response to Argument

Applicant argues that the combination would require a substantial reconstruction. It should be pointed out that the test for obviousness is not whether the features of one reference may be bodily incorporated into the other to produce the claimed subject matter but simply what the combination of references makes obvious to one of ordinary skill in the pertinent art. See *In re Bozek*, 163 USPQ 545. It should be pointed out that applicant has submitted no evidence to support the contention that the hook and loop material would fail to support the stresses. The tackle box of Wilmer appears to small and lightweight. As to the mounting of Wilmer, claim 1 recites a harness that secures the base piece to the chest of a fisherman. Applicant argues that Wilmer does not mount to the chest but to the waist. As Wilmer does not disclose the mounting being to the chest, it should be pointed out that in Figs. 1-2 of Wilmer, the base piece 6 covers the button on the user's shirt that is below the button between and just below the chest pockets. This button that is covered is usually at the height that the ribs extend down to. Hence, Wilmer shows the base piece covering the bottom of the ribs which correspond to the bottom of the chest and for that reason can be considered as a chest fly box. Also, Wilmer shows that the harness is capable of being mounted higher on the chest of a fisherman. In regard to claim 4, applicant states that Wilmer does not disclose a horizontal support plate. The support plate is shown in Fig. 5 and is not labeled, but is the plate that stops 19 are attached to. In regard to Volmer, Fig. 9

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shows hook and loop material 92 for attaching plates 84 as shown in Fig. 29. It is not clear if the plates which as a fly box can be accessed without removing them from the base piece. However, it would have been obvious to access them without removal for the purpose of providing a free hand so that one hand does not have to hold the fly box. Also note Fig. 4. it is not clear if the modules can be accessed without removing them from the base shown as #52. In regard to Hutton, applicant argues that it is impossible for the fishing rod to be held in a horizontal position. Hutton does not disclose the configuration of the fishing rod since the rod and fly box are not shown together. However, Hutton shows the structure to perform the intended use. Note that, by turning the fly box of Hutton 90 degrees, the rod holder 142 is now at the bottom of the fly box and can hold the fishing rod in a horizontal position. In regard to claim 23, applicant argues that the prior art does not show a trough to hold the fishing rod. However, the rod holder of Hutton clearly is a receptacle. Further, changes in shape are obvious. See *In re Dailey et al.*, 149 USPQ 47. Hence, it would have been obvious to shape the rod holder of Hutton as a U-shaped trough since the function is the same and no stated problem is solved. See *In re Kuhle*, 188 USPQ 8. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,
Kurt Rowan
Kurt Rowan
Primary Examiner
Art Unit 3643

KR
May 17, 2004

Conferees
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